

R E M A R K S

The drawings were objected to because they must show every feature of the invention specified in the claims, namely the transmitter being arranged on the carrier (claim 5), and the optical signal being deviated onto the diaphragm by a light guide (claim 5). A new Figure 4 has been added for consideration and is submitted herewith for the approval of the Examiner. Figure 4 shows the optical transmitter 18 being arranged on the carrier element 8 and having a light guide for deviating the optical signal from the optical transmitter onto the diaphragm. The specification has been amended to include a paragraph in the detailed description describing newly added Figure 4. Support for exists throughout the specification specifically on pages 2 and 3 thereof as well as originally filed claims 5 and 9. It is thus respectfully submitted that no new matter has been added by either the addition of Figure 4 or the amendment to the specification. Formal drawings including new Figure 4 will be filed upon approval of the Examiner. In view of the above remarks, and the amendments to the specification and the addition of new Figure 4, it is respectfully submitted that this objection has been satisfied and should be withdrawn.

Claims 1 - 11 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention as stated in the Office Action. Claims 1, 8, 9 and 11 have been formally amended in accordance with the comments of the Examiner in order to remove any existing antecedent basis

problems that may have existed. Additionally, claims 9 and 11 have been formally amended to replace the phrase "the light guide covers an extended area to ensure uniform distribution" with the phrase "the light guide is provided to cover an extended area to ensure uniform distribution." Support for this amendment can be found on pages 2 and 3 of the specification. In view of the above remarks and amendments to claims 1, 8, 9 and 11, it is respectfully submitted that this rejection has been satisfied and should be withdrawn.

Claim 1 was rejected under 35 USC 102(a) as anticipated by US Patent 5,962,841 to Okumura et al (Okumura) on the grounds set forth in the Office Action.

Claim 6 has been indicated as allowable. Claim 1 has been amended to include the limitation of allowable claim 6. It is thus respectfully submitted that Claim 1 is likewise allowable.

The present claimed invention recites a device for detecting the position of a selector lever. The selector lever is connected to a device that emits a signal to an evaluation device in a desired position of the selector lever. The selector lever (1) is connected to a first diaphragm (2) and a second diaphragm (3). The first and second diaphragms (2,3) are arranged in a beam path between an optical transmitter (18) and an optical receiver (9, 10, 11, 12, 13, 14). The diaphragm (2, 3), which follows movement of the selector lever (1), is optically transparent in the desired position of the selector lever (1). The optical receiver (9, 10, 11, 12, 13, 14) receives the signal from the optical

transmitter (18) and transmits it to the evaluation device (15).

There is one diaphragm (2, 3) for each direction of motion of the selector lever (1).

Okumura et al. discloses a device for detecting the position of a selector lever 47, in which the selector lever is connected to a

device that emits a signal to an evaluation device in a desired

position of the lever, wherein the lever is connected to at least one

diaphragm Xd, Xe, Xf arranged in a beam path between an optical

transmitter and receiver (photo-interrupter 192), the diaphragm

follows movement of the lever and is optically transparent Xf in

the desired position of the lever as a result of which the

receiver receives the signal from the transmitter and transmits

it to the evaluation device. However, the device as disclosed by

Okumura et al. is a sensor for detecting different levels of

transmissivity and as a result, provide an output signal

representative of the transmissivity level detected. This is

unlike the present claimed invention which discloses using a

diaphragm for each direction of motion in which the selector

lever is moved. Additionally, Okumura et al. neither disclose

nor suggest having diaphragms that are moved in mechanical

isolation from another. Thus claim 1 of the present claimed

invention ensures that the motion of the selector lever, whether

it be horizontal and/or vertical, is reliably detected. This is

also clearly stated in the specification on page 2, line 35 to

page 3, line 4.

In view of the above remarks and amendment to claim 1 adding the limitation of allowable claim 6, it is respectfully submitted

that the present claimed invention is patentable over Okumura et al. Thus, it is further respectfully submitted that this rejection has been satisfied and should be withdrawn.

Claim 1 was rejected under 35 USC 102(b) as anticipated by US Patent '5,132,531 to Duncan et al (Duncan) for the reasons stated in the Office Action.

Claim 6 has been indicated as allowable. Claim 1 has been amended to include the limitation of allowable claim 6. It is thus respectfully submitted that claim 1 is likewise allowable.

In view of the above remarks and amendment to claim 1 adding the limitations of allowable claim 6, it is respectfully submitted that the present claimed invention is patentable over Duncan et al. Thus, it is further respectfully submitted that this rejection has been satisfied and should be withdrawn.

Claims 2-4 were rejected under 35 USC 103(a) as unpatentable over Okumura et al on the grounds set forth in the Office Action.

Claim 6 has been indicated as allowable. Claim 1 has been amended to include the limitation of allowable claim 6. It is thus respectfully submitted that claim 1 is likewise allowable.

As claims 2 - 4 are dependent upon now allowable claim 1, it is respectfully submitted that claims 2 - 4 are allowable for the same reasons as discussed above with respect to amended claim 1.

Thus, it is further respectfully submitted that the rejection has been satisfied and should be withdrawn.

Claim 5 was rejected under 35 USC 103(a) as unpatentable over Okumura et al in view of US Patent 4,223,217 to Bongard et al (Bongard) on the grounds set forth in the Office Action.

~~Claim 6 has been indicated as allowable. Claim 1 has been amended to include the limitation of allowable claim 6. It is thus respectfully submitted that claim 1 is likewise allowable.~~

As claim 5 is dependent upon now allowable claim 1, claim 5 is allowable for the same reasons as discussed with respect to amended claim 1. Thus it is further respectfully submitted that the rejection has been satisfied and should be withdrawn.

In the Office Action, claims 6-8, 10 and 11 were said to be allowable if rewritten to overcome the rejection(s) under 35 USC 112, second paragraph, and to include all of the limitations of the base claim and any intervening claims. Claim 1 has been amended to include the limitation contained in Claim 6 as well as to overcome the rejection under 35 USC 112, second paragraph. In view of the amendment to claim 1, it is respectfully submitted that Claim 1 is in condition for allowance. Claim 7 has been amended to be dependent upon now allowable claim 1, and is allowable for the same reasons as discussed above with respect to Claim 1. Claim 8 is dependent upon now allowable claim 7, and is thus allowable for the same reasons as discussed above with respect to claims 1 and 7.

Claim 10 has been amended to be in independent form including the limitations of Claims 1 and 2, as well as to overcome the rejection under 35 USC 112, second paragraph. Therefore, in view of the above remarks and amendments to claim 10, it is respectfully submitted that claim 10 is now in condition for allowance.

~~Claim 11 has been amended to be dependent on now allowable claim~~

~~1, as well as to overcome the rejection under 35 USC 112, second paragraph. Therefore, in view of the above remarks and amendments to claim 11, it is respectfully submitted that claim 11 is now in condition for allowance.~~

New claim 12 has been added including the limitations of allowable claim 11 in independent form and thus it is respectfully submitted that Claim 12 is also allowable.

In the event there are further issues remaining in any respect the Examiner is respectfully requested to telephone attorney to reach agreement to expedite issuance of this application.

Since the present claims set forth the present invention patentably and distinctly, and are not taught by the cited art either taken alone or in combination, this amendment is believed

to place this case in condition for allowance and the Examiner is respectfully requested to reconsider the matter, enter this amendment, and to allow all of the claims in this case.

Respectfully submitted,

Andreas Baltes

By:

MARTIN A. FARBER

Attorney for Applicant

Registered Representative

Registration No. 22,345.

CERTIFICATE OF MAILING UNDER 37 CFR SECTION 1.8(a)

I hereby certify that the accompanying Amendment is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Hon. Commissioner of Patents and Trademarks, Washington, D.C. 20231, on May 2, 2003.

Dated: May 2, 2003

MARTIN A. FARBER

866 United Nations Plaza
New York, NY 10017
(212) 758-2878